

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RAD POWER BIKES LLC, a Washington Limited Liability Company)	Case No.
)	
)	
Plaintiff,)	
)	
v.)	COMPLAINT FOR COPYRIGHT
)	INFRINGEMENT, UNFAIR
JHR ELECTRIC TRANSPORT LLC d/b/a)	COMPETITION, AND LANHAM ACT
BAM POWER BIKES, an Arizona Limited)	FALSE ASSOCIATION AND FALSE
Liability Company)	ADVERTISING
)	
Defendant.)	JURY DEMAND

Plaintiff Rad Power Bikes LLC (“Rad Power Bikes” or “plaintiff”) states and alleges as follows:

CASE OVERVIEW

1. Rad Power Bikes is one of the fastest growing sellers of hybrid and electric-powered bicycles in the United States. Its e-bikes are consistently rated as a premier brand in consumer reviews.¹ Rad Power Bikes is a direct-to-consumer company. It sells direct to consumers—rather than through traditional e-bike distribution channels—in order to save its

¹ “For Rad Power Bikes, the RadRover is the bike that launched the company into the brand name it is today. I was fortunate enough to be invited to Seattle by RPB to get some hands on experience with this bike which they consider their flagship model. Right as the fat tire bike craze began, Rad Power was one the first to offer an electric version.” See <https://electricbikereview.com/rad-power-bikes/radrover/>.

1 customers the markup at retail and at a lower price point than its competitors. Rad Power Bikes
2 sells and supports its e-bike suite of products throughout the world.

3 2. In early March 2019, defendant Bam Power Bikes (“Bam” or “defendant”)
4 launched an infringing, knock-off website to promote and advertise its line of e-bike products.
5 Apparently smitten by Rad Power Bikes’ website and covetous of its well-crafted design layout
6 and written content, Bam deliberately copied wholesale portions of Rad Power Bikes’
7 copyrighted website.

8 3. Bam apparently cannot succeed in the e-bike marketplace on its own merits. Bam
9 instead hoodwinks an unwitting populace into the false impression that Bam has *already*
10 achieved Rad Power Bikes’ prominence and reputational stature in the e-bike industry. Bam
11 thoroughly mimicked Rad Power Bikes’ website content and e-bike designs in order to give the
12 copycat company an unwarranted *head start* in the e-bike marketplace. Rather than compete
13 fairly, Bam cuts marketing and design corners through siphoning Rad Power Bikes’ excellent
14 reputation and goodwill in the burgeoning world of e-bike commerce. Rad Power Bikes seeks
15 court intervention to immediately and permanently enjoin Bam’s wrongful and misleading
16 business practices.

17 THE PARTIES

18 4. Plaintiff Rad Power Bikes LLC is a limited liability company organized under the
19 laws of the state of Washington that conducts business in this judicial district with its principal
20 offices located in Seattle, Washington.

21 5. On information and belief, defendant JHR Electric Transport LLC (“JHR”)—
22 doing business as Bam Power Bikes—is a limited liability company organized under the laws of
23 the state of Arizona with its principal offices located in Phoenix, Arizona.

24 JURISDICTION AND VENUE

25 6. Subject matter jurisdiction is based on 28 U.S.C. §§ 1331, 1338, and 1367, and 28
26 U.S.C. § 1332(a). Rad Power Bikes’ claims arise under the Copyright Act, 17 U.S.C. § 101 *et*

1 *seq.*, unfair competition in violation of the Lanham Act, 15 U.S.C. §§ 1125, and for relief under
 2 Washington statutory and common law. Defendant is subject to personal jurisdiction in the
 3 Western District of Washington and venue is appropriate in the Western District of Washington
 4 under 28 U.S.C. § 1391. Defendant purposefully directs its unfair and deceptive commercial
 5 activities into this state and judicial district—deluding potential e-bike purchasers here, as well
 6 as nationwide.

7 **CASE FACTUAL SUMMARY**

8 7. Rad Power Bikes is owned and managed by dedicated e-bike enthusiasts, product
 9 designers and entrepreneurs. Founders Mike Radenbaugh and Ty Collins built their first e-bike
 10 in 2007. Since then, Rad Power Bikes has been on a mission to design, build and support
 11 feature-rich, affordable e-bikes for everyday use. Rad Power Bikes' consumer-facing ethos
 12 offers a clear benefit over the more generic, pre-made e-bikes that populate the market. Many
 13 improvements to Rad Power Bikes' e-bikes are derived directly from community user feedback.

14 8. Rad Power Bikes displays all of its products and accessories on its website,
 15 www.radpowerbikes.com. The company's e-bikes include its trademark-protected RadRover,
 16 RadWagon, RadMini, and RadCity product lines. Rad Power Bikes officially launched its
 17 website in 2015; and the company maintains a social media presence on Facebook, Instagram
 18 and YouTube, among other places. Rad Power Bikes' products are also showcased in its Seattle-
 19 based retail store.

20 9. Rad Power Bikes is the beneficiary of press coverage applauding its affordable
 21 quality products and outstanding customer service. By way of example,

22 I think Rad Power Bikes' high-quality product offerings, competitive pricing,
 23 product line breadth and superb customer experience is positioning the company

1 well for success in what surely will become an even more competitive,
2 mainstream market.²

3 10. Rad Power Bikes diligently protects its intellectual property rights, including its
4 copyrighted website. Rad Power Bikes obtained five certificates of copyright registration
5 (attached as Exhibit A) for its website: (a) TX0008557988, for its Bike Measurements Graphic;
6 (b) TX0008557996 for its About Us Employees Profile webpage; (c) TX0008578219 for its
7 Community Stories webpage; (d) TX0008558000 for its Compare Bikes webpage; and (e)
8 TX0008558052 for its Interactive Product Overview Graphic.

9 11. On information and belief, Bam is owned by JHR, an electric power vehicle
10 company that began selling e-bikes in 2009. JHR is headquartered in Phoenix, Arizona.
11 Through its BAM website and social media, JHR advertises and sells its e-bike line of products.

12 12. On information and belief, JHR launched its website, www.bampowerbikes.com
13 on March 1, 2019.³ Shortly thereafter, Rad Power Bikes became aware of how Bam's website
14 emulates Rad Power Bikes' copyrighted content. Among other things, Bam copied every detail
15 of Rad Power Bikes' banner on its home page, reviews preview page, pricing graphic and
16 support introduction. The overall look and feel of Bam's website is intended to call to mind Rad
17 Power Bikes' website and e-bike product offerings—in order to replicate Rad Power Bikes'
18 more alluring business *persona*.

19 13. Bam's website touts itself as the “the leader in developing and manufacturing
20 electric power vehicles in America.” Its website proclaims that “US and International Patents
21

22 ² “I found my actual riding experience on the RadCity bike to be nothing short of thrilling. Rad
23 Power Bikes' engineering team deserves kudos for the suspension and gearing system—it is
24 pleasantly smooth, and ideal for long city rides.” See
<https://www.forbes.com/sites/moorinsights/2018/05/21/review-the-radcity-electric-commuter-bike-is-truly-rad/#21bede2e7d15>

25 ³ See https://www.facebook.com/bampowerbikes/?ref=page_internal (post dated March 1, 2019
26 at 9:22 am stating “[i]t's official! Our BAM Power Bikes site is live. Who will be my first
sale?”).

1 protect our unique Electric systems. These systems are the backbone of our ebikes and scooters .
 2 . . .” A review of issued or applied-for United States patents, however, discloses no patents
 3 assigned to defendant JHR. Taken at face value, defendant’s patent ownership claim appears to
 4 be a false or misleading statement of fact.

5 14. To its reputational detriment, Rad Power Bikes has already been contacted by
 6 potential or actual e-bike purchasers and owners who visited Bam’s website recently.
 7 Collectively, they wondered and questioned whether there is some association or affiliation
 8 between the two companies. By way of illustration, an individual who reviewed Bam’s new
 9 website contacted Rad Power Bikes’ customer support on March 12, 2019, and asked,
 10 “Bampowerebikes.com carry the exact same bikes that you guys carry, even the Rad Mini is
 11 copied exact. How can this be?” Another prospective purchaser contacted Rad Power Bikes on
 12 March 19, 2019, and stated, “What concerns me is the BAM bikes are literally identical to the
 13 Rad Power Bikes I’ve been looking at the RAD Rover for a couple of months. But now
 14 I’m concerned it’s just a generic product produced somewhere else and then RAD perhaps
 15 modifies the software for the controller.” These are just a small sample of the prospective e-bike
 16 purchasers responding negatively and with confusion regarding Bam’s entry into the e-bike
 17 market through its knock-off website and identical product offerings.

18 **COUNT I**

19 **Copyright Infringement under 17 U.S.C. § 501**

20 15. Plaintiff Rad Power Bikes incorporates by reference the allegations set forth in
 21 paragraphs 1 through 14.

22 16. Plaintiff’s cause of action arises under the Copyright Act, 17 U.S.C. § 501, *et seq.*

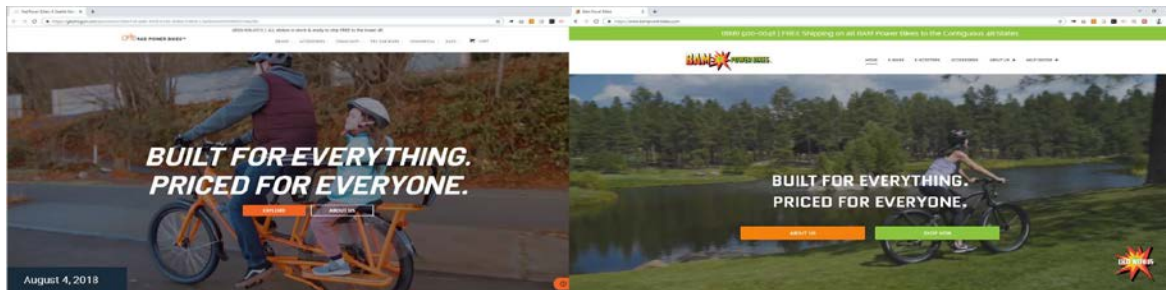
23 17. Upon information and belief, JHR had continuous access to Rad Power Bikes’
 24 website for at least four years, including its home page, “Bike Measurements” graphic, reviews
 25 page, customer support page, and consumer-pricing page, which have been widely viewed over
 26 the Internet since 2015.

18. Defendant deliberately and willfully copied multiple design elements of Rad Power Bikes' website in an attempt to mimic its website, confuse customers, and wrongfully capitalize off Rad Power Bikes' superior market reputation and goodwill.

19. Defendant deliberately and willfully copied Rad Power Bikes' banner on its home page as evidenced by the side-by-side comparison below:

Rad Power Bikes

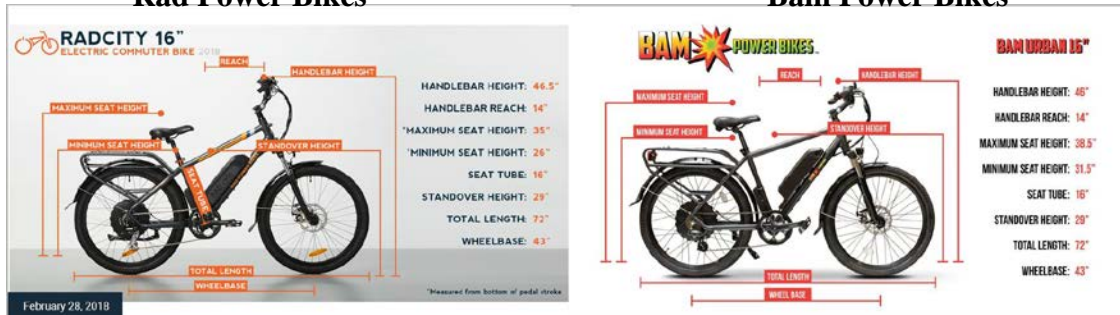
Bam Power Bikes



20. Defendant deliberately and willfully copied Rad Power Bikes' "Bike Measurements" graphic as evidenced by the side-by-side comparison below:

Rad Power Bikes

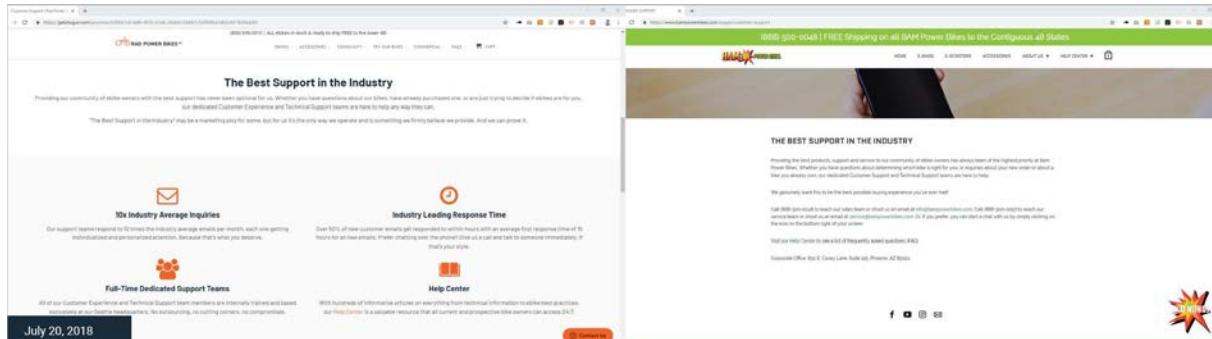
Bam Power Bikes



21. Defendant deliberately and willfully copied Rad Power Bikes' description of its customer support services as evidenced by the side-by-side comparison below:

Rad Power Bikes

Bam Power Bikes



22. Defendant deliberately and willfully copied Rad Power Bikes' customer reviews layout as evidenced by the side-by-side comparison below:

Rad Power Bikes

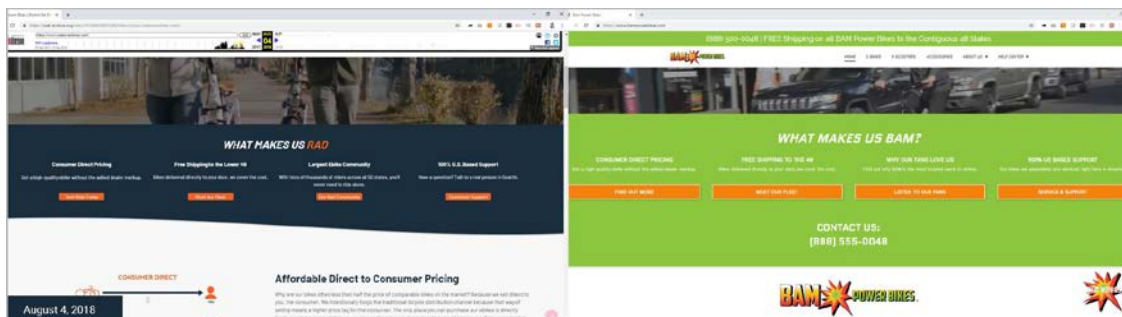
Bam Power Bikes



23. Defendant deliberately and willfully copied Rad Power Bikes' "what makes us rad" banner layout as evidenced by the side-by-side comparison below:

Rad Power Bikes

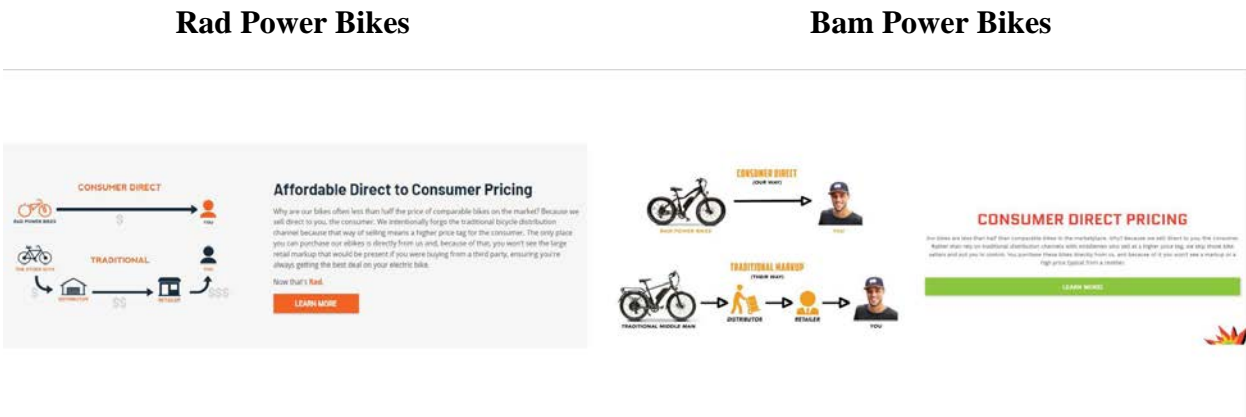
Bam Power Bikes



COMPLAINT FOR COPYRIGHT INFRINGEMENT, UNFAIR COMPETITION, AND LANHAM ACT FALSE ASSOCIATION AND FALSE ADVERTISING - 7

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24. Defendant deliberately and willfully copied Rad Power Bikes' consumer direct pricing description and graphic as evidenced by the side-by-side comparison below:



25. Defendant infringed Rad Power Bikes' copyright interests by reproducing plaintiff's copyrighted website elements and displaying those elements on its website without authorization. Defendant's unauthorized display of Rad Power Bikes' copyrighted website elements—when viewed and assessed in combination—sought to and did copy the overall look and feel of plaintiff's website. Defendant's actions constitute knowing, willful, and deliberate copyright infringement in violation of Rad Power Bikes' exclusive right to display, reproduce, and distribute the copyrighted work.

26. Rad Power Bikes seeks to recover the actual damages caused by defendant's infringing conduct, together with any profits of defendant attributable to such infringement, or statutory damages, together with the attorneys' fees and costs incurred in connection with the prosecution of this action. Rad Power Bikes' investigation of defendant's infringing conduct is ongoing and this complaint may be amended accordingly.

COUNT II

Lanham Act False Association and False Advertising Claims, 15 U.S.C. § 1125(a)

27. Rad Power Bikes incorporates by reference the allegations set forth in paragraphs 1 through 26 above.

1 28. Rad Power Bikes' Lanham Act claims arise under both the false association and
2 false advertising prongs of 15 U.S.C. § 1125(a). Defendant's use of the Rad Power Bikes' core
3 website elements and features in combination has caused and—unless abated—will continue to
4 cause confusion, mistake, and/or deception as to the affiliation, connection, and/or association of
5 defendant's e-bike products with plaintiff and its e-bike products. Defendant's brazen use of
6 Rad Power Bikes' website elements in combination is likely to lead e-bike consumers to believe
7 that Rad Power Bikes authorizes and approves of Bam's infringing website elements, sponsors
8 defendant's e-bike products, or is somehow affiliated with defendant's e-bike products.

9 29. Upon information and belief, defendant's website advertising claim regarding its
10 alleged ownership of United States patent rights is false and misleading. Defendant does not
11 appear to own any U.S. patent rights based on a review of available United States Patent and
12 Trademark Office patent assignment records. Upon information and belief, other factual
13 statements included in the Bam Power Bikes website may also be false or misleading, especially
14 regarding the supposed "American" manufacturing provenance of defendant's e-bikes.
15 Plaintiff's false advertising claim may be amended based on pretrial discovery.

16 30. Rad Power Bikes has suffered and will continue to suffer harm as defendant's
17 actions continue to deceive and confuse the relevant consuming public as to the origin,
18 sponsorship, affiliation, and/or connection of and between the relevant products, and by virtue of
19 defendant's factual statements that constitute false advertising. Defendant's desire to emulate
20 Rad Power Bikes interferes with plaintiff's right to control its own brand and reputation. In
21 order to correct and end the misimpressions being foisted upon an unsuspecting public through
22 Bam's deliberate replication of Rad Power Bikes' website design and business *persona*, Rad
23 Power Bikes seeks immediate and permanent injunctive relief, and damages in an amount to be
24 proven at trial.

COUNT III

**Unfair Competition Under Wash. Rev. Code. 19.86.20
Washington State Common Law**

31. Rad Power Bikes incorporates by reference the allegations set forth in paragraphs 1 through 30 above.

32. Defendant's conduct constitutes a willful violation of the Washington Consumer Protection Act, RCW 19.86.20, *et seq.*, and unfair competition under Washington common law. Defendant continues to engage in unfair and deceptive acts in trade and commerce by infringing Rad Power Bikes' copyrighted website elements in combination in order to duplicate the overall look and feel of Rad Power Bikes' website, and by falsely advertising its products as being protected by company-owned patents.

33. Defendant's actions have the capacity to materially deceive a substantial portion of the public. By deluding the potential purchasers of e-bikes into drawing unfair and misleading comparisons between Bam and Rad Power Bikes, defendant is trying to give itself a leapfrog head-start in e-bike commerce. JHR's unfair competitive conduct is leading, and will lead, reasonable consumers located in Washington and elsewhere into believing that Rad Power Bikes sponsors defendant's e-bike products, or that the company is somehow affiliated with defendant's products, or that Rad Power Bikes' products are of generic quality.

34. As a result of defendant's wrongful and willful conduct, Rad Power Bikes' commercial and reputational stature is being compromised and sullied. To combat defendants' unlawful conduct, Rad Power Bikes seeks immediate and permanent injunctive relief, and a recovery of damages and fees incurred in an amount to be proven at trial.

Jury Demand

35. Pursuant to Federal Rule of Civil Procedure 38(b), Rad Power Bikes requests jury trial on all issues so triable.

WHEREFORE, Plaintiff Rad Power Bikes LLC demands judgment against defendant JHR Electric Transport LLC as follows:

1. For an award of actual damages suffered by Rad Power Bikes as a result of defendant's copyright infringement, together with any profits of defendant attributable to such infringement, or, in the alternative, statutory damages, and any other damages to which Rad Power Bikes is entitled, including its costs and attorneys' fees pursuant to 17 U.S.C. § 505;

2. For a determination that defendant willfully infringed Rad Power Bikes' copyright interests and that Rad Power Bikes is entitled to an increased award of damages pursuant to 17 U.S.C. § 504(c)(2);

3. For an award of monetary relief under 15 U.S.C. § 1117 for defendant's profits, the damages sustained by plaintiff, the costs of the action in an amount, and a trebling of damages to account for defendant's willfully infringing conduct; and for monetary and injunctive relief available under Washington's Consumer Protection Act and Washington common law;

4. For an award of pre-judgment and post-judgment interest, as allowed by law;

5. For the entry of preliminary and permanent injunctive relief:

a. Restraining defendant and its respective officers, directors, agents, servants, employees, and other representatives, as well as those in active concert with it, from infringing any of Rad Power Bikes' exclusive rights in the copyrighted works, and from engaging in any other conduct that violates of Rad Power Bikes' legal rights;

b. Directing an accounting of defendant's revenue and/or profits attributable to its infringement of the copyrighted works and unfair competition;

6. For such other and further relief as this Court deems just and proper.

1 DATED this 3rd day of April 2019.

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COMPLAINT FOR COPYRIGHT INFRINGEMENT, UNFAIR
COMPETITION, AND LANHAM ACT FALSE ASSOCIATION
AND FALSE ADVERTISING - 12

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